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HOUSE BILL 516

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Peter Wirth

AN ACT

**RELATING TO ENVIRONMENT; PROVIDING PENALTIES FOR FAILURE TO
TAKE CORRECTIVE ACTION IN ACCORDANCE WITH COMPLIANCE ORDERS;
AUTHORIZING ENFORCEMENT ACTIONS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 74-2-12 NMSA 1978 (being Laws 1992,
Chapter 20, Section 14, as amended) is amended to read:**

**"74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD
CITATIONS.--**

**A. When, on the basis of any information, the
secretary or the director determines that a person has violated
or is violating a requirement or prohibition of the Air Quality
Control Act, a regulation promulgated pursuant to that act or a
condition of a permit issued under that act, the secretary or
the director may:**

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1 (1) issue a compliance order within one year
2 after the violation becomes known by the department or the
3 local agency stating with reasonable specificity the nature of
4 the violation and requiring compliance immediately or within a
5 specified time period or assessing a civil penalty for a past
6 or current violation, or both; or

7 (2) commence a civil action in district court
8 for appropriate relief, including a temporary or permanent
9 injunction.

10 B. An order issued pursuant to Subsection A of this
11 section may include a suspension or revocation of any permit,
12 or portion thereof, issued by the secretary or the director.
13 Any penalty assessed in the order shall not exceed fifteen
14 thousand dollars (\$15,000) per day of noncompliance for each
15 violation; provided, however, that if a violator fails to take
16 corrective action within the time specified in a compliance
17 order, the secretary or director may:

18 (1) assess a civil penalty of not more than
19 twenty-five thousand dollars (\$25,000) for each day of
20 continued noncompliance with the order; and

21 (2) suspend or revoke any permits issued to
22 the violator pursuant to the Air Quality Control Act.

23 C. An order issued pursuant to Subsection A of this
24 section shall become final unless, no later than thirty days
25 after the order is served, the person named therein submits a

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1 written request to the secretary or the director for a public
2 hearing. Upon such request, the secretary or the director
3 shall promptly conduct a public hearing. The secretary or the
4 director shall appoint an independent hearing officer to
5 preside over the public hearing. The hearing officer shall
6 make and preserve a complete record of the proceedings and
7 forward his recommendation based thereon to the secretary or
8 the director, who shall make the final decision.

9 D. The environmental improvement board or the local
10 board may implement a field citation program through
11 regulations establishing appropriate minor violations for which
12 field citations assessing civil penalties not to exceed one
13 thousand dollars (\$1,000) per day of violation may be issued by
14 officers or employees of the department or the local agency as
15 designated by the secretary or the director.

16 E. A person to whom a field citation is issued
17 pursuant to Subsection D of this section may, within a
18 reasonable time as prescribed by regulation by the
19 environmental improvement board or the local board, elect to
20 pay the penalty assessment or to request a hearing by the
21 issuing agency on the field citation. If a request for hearing
22 is not made within the time specified in the regulation, the
23 penalty assessment in the field citation shall be final.

24 F. Payment of a civil penalty required by a field
25 citation issued pursuant to Subsection D of this section shall

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1 not be a defense to further enforcement by the department or
2 the local agency to correct a violation or to assess the
3 maximum statutory penalty pursuant to other authorities in the
4 Air Quality Control Act if the violation continues.

5 G. In determining the amount of a penalty to be
6 assessed pursuant to this section, the secretary, the director
7 or the person issuing a field citation shall take into account
8 the seriousness of the violation, any good-faith efforts to
9 comply with the applicable requirements and other relevant
10 factors.

11 H. In connection with a proceeding under this
12 section, the secretary or the director may issue subpoenas for
13 the attendance and testimony of witnesses and the production of
14 relevant papers, books and documents and may adopt rules for
15 discovery procedures.

16 I. Penalties collected pursuant to an
17 administrative order or a field citation shall be deposited in
18 the:

19 (1) ~~municipal~~ or county general fund, as
20 applicable, if the administrative order or field citation was
21 directed to a source located within a local authority; or

22 (2) state general fund if the administrative
23 order or field citation was directed to any other source."

24 Section 2. Section 74-2-12.1 NMSA 1978 (being Laws 1992,
25 Chapter 20, Section 15, as amended) is amended to read:

. 153272. 1

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1 "74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT
2 OR LOCAL AUTHORITY--LIMITATION OF ACTIONS. --

3 A. A person who violates a provision of the Air
4 Quality Control Act or a regulation, permit condition or
5 emergency order adopted or issued pursuant to that act may be
6 assessed a civil penalty not to exceed fifteen thousand dollars
7 (\$15,000) for each day during any portion of which a violation
8 occurs.

9 B. If a violator defaults on a final order issued
10 pursuant to Section 72-2-12 NMSA 1978, the secretary may
11 commence a civil action in district court to collect civil
12 penalties assessed in the order. Penalties collected shall be
13 deposited in the general fund.

14 [~~B.~~] C. In an action to enforce the provisions of
15 the Air Quality Control Act or an ordinance, regulation, permit
16 condition or emergency order, adopted, imposed or issued
17 pursuant to that act:

18 (1) the department shall be represented by the
19 attorney general;

20 (2) a local authority that is a municipality
21 shall be represented by the attorney of the municipality; and

22 (3) a local authority that is a county shall
23 be represented by the district attorney within whose judicial
24 district the county lies.

25 [~~C.~~] D. No action for civil penalty shall be

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1 commenced more than five years from the date the violation was
2 known by the department or the local agency. "

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